

OPINION NO. 72-028

Syllabus:

1. A board of county commissioners may use tax monies levied and collected under Section 5705.06 (D), Revised Code, to purchase land and construct a highway garage thereon, pursuant to Section 5549.01, Revised Code.

2. A board of county commissioners may use tax monies obtained by special levy for road purposes under Section 5705.07, Revised Code, to purchase land and construct a highway garage thereon, pursuant to Section 5549.01, Revised Code.

To: Reynold C. Hoefflin, Greene County Pros. Atty., Xenia, Ohio
By: William J. Brown, Attorney General, April 12, 1972

I have your request, addressed to my predecessor, for an opinion as to whether a board of county commissioners may, in view of the provisions of Section 5549.01, Revised Code, use tax monies levied and collected under Section 5705.06 (D), Revised Code, in order to purchase land and to construct a highway garage thereon.

Section 5549.01, supra, reads in pertinent part as follows:

"The board of county commissioners may purchase such machinery, tools, or other equipment, including special wearing apparel, for the construction, improvement, maintenance, or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary.

" * * *

* * *

* * *

"The board shall provide a suitable place for housing and storing machinery, tools, and equipment, including special wearing apparel, materials, and conveyances owned by the county, and may purchase the necessary material and construct, or enter into an agreement with a railroad company to construct, one switch or spur track from the right of way of such railroad company to land or storage house owned by the county. All expenditures authorized by this section shall be paid out of any available road funds of the county.

" * * *

* * *

* * *

(Emphasis added.)

This Section expressly confers the power to construct a highway garage for the purposes stated, and clearly implies the power to purchase the necessary land. Your question is whether tax monies levied and collected under Section 5705.06 (D), supra, or Section 5705.07, Revised Code are "road funds of the county" within the meaning of Section 5549.01, supra.

Section 5705.06 (D), supra, reads in context as follows:

"The following special levies are hereby authorized without vote of the people:

" * * * * *

"(D) In the case of a county, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges on such roads;

" * * * * *

"Each such special levy shall be within the ten-mill limitation " * * * ."

The fund resulting from a special levy under Section 5705.06 (D), supra, is, by its plain terms, a road fund of the county, and therefore may be used for purposes authorized by Section 5549.01, supra. To this extent, I agree with my predecessor's prior advice to you in Opinion No. 70-141, Opinions of the Attorney General for 1970.

My predecessor further advised you in that Opinion that funds from levies authorized by Section 5705.07, supra, would also qualify. That Section reads as follows:

"The taxing authority of any subdivision may make tax levies authorized in excess of the ten-mill limitation by a vote of the people under the law applicable thereto, irrespective of all limitations on the tax rate."

Under Section 5705.04 (E), Revised Code, such levies may be either general or special. Proceeds from general levies are paid into the general fund, and those from special levies are paid into special funds earmarked according to the purpose of the special levy. Section 5705.10, Revised Code.

Money from the general fund cannot be used for the purposes authorized by Section 5549.01, supra. Prior to 1921, that section (then Section 7200, General Code) read in pertinent part as follows:

"The county commissioners may purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary, which shall be paid for out of the road funds of the county. * * * The county commissioners shall provide suitable places for housing and storing machinery, tools, equipment and conveyances owned by the county."

One of my predecessors construed this statute to authorize payment from the general fund for construction of "places for housing and storing machinery, * * * ." Opinion No. 1600, Opinions of the Attorney General for 1920. But in stating his reasons for this conclusion, at page 1921, he revealed some misgivings:

"Since the upkeep of roads is one of the commonest of the county's activities and requires machinery, tools, etc. it follows that provision for the housing and storing of such machinery and tools is an ordinary county purpose, to which the general county fund may be devoted so far as not otherwise appropriated. It is not out of place to suggest, however, that before the general county fund is resorted to for the purpose in question, use should be made of unappropriated moneys, if any, in the public building fund."

The next year, he applied this reasoning to the question of a county's power to rent such buildings. In Opinion No. 2055, Opinions of the Attorney General for 1921, he states, at page 377, as follows:

"In the previous opinion of September 30, 1920, above mentioned, it was held that for the purchase of a site and building for housing and storing road machinery and conveyances, the commissioners might appropriate from the county general fund, though it was suggested that resort be had in the first instance to unappropriated moneys, if any, in the public building fund. Since the plan you speak of, however, is that of renting, rather than purchasing, a building,-- in other words, a current expense rather than a permanent investment,--the proper fund to be resorted to in the first instance is the county general fund and not the public building fund."

In that same year, the legislature amended the statute. Among other changes, it rephrased and relocated the "road funds" limitation, so that it now clearly applies to all expenditures made under authority of this Section. (See Section 5549.01, *supra*.) The language used is not permissive, but is mandatory - "shall be paid out of any available road funds of the county." (Emphasis added.) I conclude that the legislature intended to change the rule put forth by my predecessor, and to require that any expenditures under Section 5549.01, *supra*, be made only from funds obtained by special levies for road purposes. Hence, funds obtained by a tax levy authorized by Section 5705.07, *supra*, may be used for construction of a highway garage and purchase of land therefor only if the levy was a special one for road purposes. To that extent, I agree with my predecessor's conclusion in Opinion No. 70-141, *supra*, that funds obtained by levy under Section 5705.07, *supra*, may be used for such purposes.

In specific answer to your question it is my opinion, and you are so advised, that:

1. A board of county commissioners may use tax monies levied and collected under Section 5705.06 (D), Revised Code, to purchase land and construct a highway garage thereon, pursuant to Section 5549.01, Revised Code.

2. A board of county commissioners may use tax monies obtained by special levy for road purposes under Section 5705.07, Revised Code, to purchase land and construct a highway garage thereon, pursuant to Section 5549.01, Revised Code.